REGD. GOA - 5

Panaji, 27th July, 2000 (Sravana 5, 1922)

SERIES II No. 17

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

—

Order

No. CL/Pub-Awards/97/7158

The following Award dated 6-1-1998 in Reference No. IT/5/97 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 4th February, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/5/97

Shri Pradeep R. Naik,
Petter, Carambolim,
PO. Corlim, Ilhas Goa. — Workman/Party I

V/s

M/s Ganga Printers,
Near the Church,
Panaji, Goa. — Employer/Party II

Workman/Party I represented by Adv. Shri A. Nigalye.
Employer/Party II - Ex-parte.

Dated: 6-1-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order No. IRM/CON/(43)/96/304 dated 16th January, 1997 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Ganga Printers, Panaji Goa in terminating the services of Shri Pradeep R. Naik, Printer, with effect from 9-4-1996 is legal and justified?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/5/97 and registered A/D notice was issued to the parties and both the parties were duly served with the said notice. The workman/Party I (For short "Workman") was represented by Adv. Shri A. Nigalye and the workman filed his statement of claim which is at Exb. 3. The Employer/Party II (For short "Employer") inspite of being served with the notice did not appear and did not file written statement inspite of the opportunity given and therefore, the case was proceeded ex-parte against the employer on 26-6-97.

3. The facts of the case in brief as pleaded by the workman are that the employer is a proprietary concern belonging to Shri Saluzinho Dias Sapeco, and the workman was employed with the employer as a Printer with effect from 20-6-93 and his last drawn salary was Rs. 950/- per month. That on 6-4-96 the Proprietor of the employer told the workman that his services have been terminated and that he should not report for work from 8-4-96. That about two months prior to the date of termination of services, the employer had issued an undated letter to the workman asking him to leave the

job of printing from the next two months. That the workman raised an industrial dispute with the employer and in the conciliation proceedings held by the Asst. Labour Commissioner, the employer contended that he did not terminate the services of the workman and stated that he has asked the workman to do his duties which he refused. That however, the employer admitted that the salary of the workman was not paid for the month of March "96 and he instructed him to approach the office of the Labour Commissioner for the said purpose. That the employer did not pay to the workman any retrenchment compensation or one month's pay in lieu of notice at the time of termination of services nor gave one month's notice prior to termination of service. The workman therefore contended that the action of the employer in terminating his services w.e.f. 8-4-96 is illegal and unjustified and hence he is liable to be reinstated in service with full back wages and with continuity in service.

4. As mentioned earlier, the case was proceeded ex-parte against the employer as inspite of the opportunity given, the employer did not appear and also did not file any written statement. Consequently, only the evidence of the workman is on record. The workman has examined only himself in support of his case, and his deposition has gone unchallenged. The workman has produced the letter of appointment Exb.W-1 which proves that he was employed as the printer with the employer with effect from 20th July, 1993. The workman has stated in his deposition that the employer terminated his services w.e.f. 8-4-1996 and that at the time of termination of his services, he was not issued any letter of termination. There is no challenge to this statement of the workman as the employer allowed the case to proceed ex-parte against him. The workman has also produced a letter Exb.W-2 addressed to him. This letter according to the workman was handed over to him by the employer prior to the termination of his services. This letter states that the employer is not satisfied with the work of the workman and that he should leave the job of printing. This document also supports the contention of the workman that his services were terminated by the employer.

5. Adv. Shri Nigalye, representing the workman has submitted that the termination of the services of the workman amounts to retrenchment, and since the employer did not comply with the provisions of Sec. 25-F of the I. D. Act, 1947, the action of the employer in terminating the services of the workman is illegal and unjustified. Retrenchment has been defined under Sec.2(oo) of the I. D. Act, 1947 as follows:

> "Retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contain a stipulation in that behalf; or
>
> (bb) Termination of the services of the workman as a result of non renewal of its contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf concerned therein; or
>
> (c) Termination of the services of a workman on the ground of continued ill-health.

The workman in his deposition has stated that prior to termination of his services, he was not issued any warning or any memo. There is no evidence on record that the services of the workman were terminated because of misconduct. The letter Exb. W-2 produced by the workman states that the workman should leave the job because his work is not satisfactory. Therefore, the termination of the workman is not as a matter of punishment inflicted by way of disciplinary action. The case of the workman also does not fall within the exception laid down under Sec. 2 (oo) of the I.D. Act, 1947. I therefore agree with the submission of Adv. Shri Nigalye for the workman that the termination of the service of the workman amounts to retrenchment. Sec. 25-F of the I. D. Act, 1947 lays down the procedure of retrenchment. As per this provision, the services of a workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of such notice and he has been paid compensation at the rate of 15 days average wage per each completed year of continuous service or any part thereof in excess of six months. The above conditions are conditions precedent to retrenchment. Sec. 25 E(2) of the I.D. Act, 1947 defines "continuous service". As per the said provision, a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 190 days in case of workman employed below ground in a mine and 240 days in any other cases. In the present case, the employer was carrying on the business of book binding, printing etc. and the workman was employed as a printer. He was employed from 20th June, 1993 and his services were terminated on 8-4-96. Therefore, the workman has worked with the employer for more than 240 days during the period of 12 calendar months preceding the date of termination of his services and hence the provisions of Sec. 25 F of the I.D.Act, 1947 became applicable to him. There is no evidence that the employer gave the workman one month's notice or paid wages in lieu of such notice or paid retrenchment compensation as required under the law. Therefore, there is no compliance of Sec. 25-F of the I.D.Act, 1947 from the employer. The Supreme Court in the case of M/s Avon Services Production Agency Pvt. Ltd. V/s Industrial Tribunal, Haryana and others reported in AIR 1979 SC 170 has held that giving of notice and payment of

compensation is a condition precedent in the case of retrenchment and failure to comply with the prescribing conditions precedent for valid retrenchment in Sec. 25-F renders the order of retrenchment invalid and inoperative. In the present case, since there is no compliance of the provisions of Sec. 25-F of the I. D. Act, 1947 from the employer, the termination of the services of the workman becomes illegal, invalid and inoperative. I therefore hold that the action of the employer in terminating the services of the workman is illegal and unjustified.

6. The next question for determination is, what relief should be granted to the workman ? The workman has claimed reinstatement with full back wages. The workman in his deposition has stated that he is unemployed and at the time when his services were terminated, he was drawing Rs. 950/- p.m. as wages. This statement of the workman has gone unchallenged and there is no evidence contrary to this. The ordinary rule is that when the order of termination of service is held to be illegal and unjustified, the workman should be reinstated in service with full back wages, unless there are circumstances which do not warranty reinstatement or full back wages. In the present case, I do not find any reason to deviate from this rule. The Supreme Court in the case of State Bank of India V/s Sundara Money reported in AIR 1976 SC 1111 in para 10 of its judgement has held as follows:-

> " What follows ? Had the State Bank of India known the law and acted on it, half month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay for no service rendered. Even so, hard cases cannot make bad law. Reinstatement is the necessary relief that follows."

In the present case also, the employer did not comply with the provisions of Sec. 25-F of the I. D. Act, 1947 at the time of terminating the services of the workman. There is no evidence that the workman was gainfully employed after termination of his services. Therefore, the workman is entitled to reinstatement in service with full back wages and other consequential benefits.

In the circumstances, I pass the following order:

ORDER

It is hereby held that the action of the management of M/s Ganga Printers, Panaji-Goa, in terminating the services of the workman Shri Pradeep R. Naik, Printer, with effect from 8-4-1996 is illegal and unjustified. The workman Shri Pradeep R. Naik is ordered to be reinstated in service with full back wages and all other consequential benefits.

No order as to costs.

Inform the Government accordingly.

Sd/-

(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/97/7536

The following Award dated 16-2-1998 in Reference No. IT/9/75-R-97/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 2nd March, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/9/75-R-97/94

Workmen — Party I

V/s

M/s. P. G. Virginkar & Co. — Party II

Workmen/Party I represented by Adv. Shri P. K. Gude and Adv. Shri N. Savoikar.

Employer/Party II represented by Adv. Shri B. G. Kamat.

Dated: 16-2-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Lieutenant Governor of Goa, Daman and Diu by order dated 26th December, 1974 bearing No. CLP/I/ID/(54)/IT/74/1503 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the Management of M/s. P. G. Virginkar and Co., Margao Goa in retrenching the workmen from services whose names are listed in the annexure below, w. e. f. the date shown against their name is legal and justified?

If not, to what relief the workmen are entitled to ?"

ANNEXURE

Sr. No.	Name of workmen	Designation	Date of termination
1.	Shri Anant D. Hegde	Sr. Clerk	25-3-1974
2.	Shri Balkrishna G. Amonkar	Jr. Clerk	25-3-1974
3.	Shri Motilal A. Shinde	Jr. Clerk	25-3-1974
4.	Shri Sham Verdeker	Jr. Clerk	25-3-1974
5.	Shri Jairam B. P. Gaonkar	Delivery Boy	25-3-1974
6.	Shri Rosario L. Mendes	Delivery Boy	25-3-1974
7.	Shri Khushali Y. Priolkar	Delivery Boy	25-3-1974
8.	Shri Naraina P. Vernekar	Delivery Boy	25-3-1974
9.	Shri Vishnu B. Raikar	Delivery Boy	25-3-1974
10.	Shri Jose M. Pereira	Jr. Clerk	25-3-1974
11.	Shri Kashinath M. Naik	Driver	1-4-1974
12.	Shri Sham M. Revankar	Foreman	25-3-1974
13.	Shri Constancio Pereira	Mechanic	1-4-1974

2. On receipt of the reference, a case was registered under No. IT/9/75 and registered A/D notice was issued to the parties. The parties were duly served with the notice and they put in their appearance. The workman/Party I (For short "Union") filed the Statement of Claim in support of the contention that the action of the Employer/Party II (For short "Employer") in retrenching the workmen, named in the reference, is illegal and unjustified. The facts of the case in brief as pleaded by the Union are that the employer is a partnership concern dealing in sale of automobiles, petrol and diesel and also is the sole agent for Bajaj Matador Mini Buses, Fiat (Premier President including Safari) fargo Chasis for bus and Truck, Fargo Pickups etc. and that the employer also has a maintenance and repair garage. That the business of the employer for the five years prior to retrenchment is prospering and is making huge profits. That the employees of the employer formed an Union sometime in January, 1974 and made collective demands on the management on 7-2-1974 asking for some form of Dearness Allowance to meet the high living cost and shrinkage of real wages. That the reason given by the employer for retrenchment in the notice of retrenchment are not the real reasons and the retrenchment was made so as to supress the Trade Union activities of the workmen and to stop them from forming an Union. That the retrenchment is malafide and by way of victimisation. That the employer did not follow the principle of "first come, last go" and no seniority list was prepared as per the categories of work in all the units of the establishment. That the reason of economy is a lame excuse for retrenchment because the sales of vehicles showed sharp rise, brought huge profits to the employer and also the sale of petrol and diesel did not show any fall for the years 1973 and 1974. That the workmen accepted the compensation offered to them under protest and they still maintained that the retrenchment is illegal, malafide and bad-in-law. The Union therefore contended that since the retrenchment is illegal and unjustified, the workmen are entitled to reinstatement with full back wages and continuity in service.

3. The employer filed the written statement denying the claim of the Union. The employer stated that the Union, namely the Goa Trade and Commercial Workers Union, has no locus standi to sponsor the dispute of the workmen so as to invert it with the status of an industrial dispute or that the Union can claim a representative character in such a way that its support to the cause would make the dispute an industrial dispute because the said Union is not an union of the employees of the employer in any of its departments and some of the workmen joined the said union after their retrenchment for the purpose of raising the dispute and as such the Union is not directly or substantially interested in the employment or non-employment or the terms of employment or the conditions of labour of the employees of the employer. The employer denied that the Union has locus standi to sponsor the dispute so as to give it the status of an industrial dispute. The employer denied that the workers authorised the union at the time or before the reference to represent or response their cause by raising industrial dispute or that the General Secretary of the Union has the authority to sign the claim statement on behalf of all the workmen. The employer therefore contended that the reference is illegal, invalid and not maintainable and is liable to be rejected in limine. The employer denied that it is the sole agent for FIAT or FARGO chasis for the bus and truck or for FARGO pickups or that it has a mainteinance and repair garage for private vehicles or that it is being entrusted to do repair works to all Mahindra and Mahindra Wiigs jeeps. The employer denied that its business for five years prior to retrenchment was prospering or that it is making huge profits or that its petrol pump has not been closed down. the employer denied that the employees of the employer had formed an Union either in January, 1974 or at any other time or the employees had made any collective demand on the management on 7th January, 1974 for dearness allowance, or that the reason for retrenchment was for supressing the Trade Union activity of the workmen or to stop them from forming union. The employer denied that the general policy of re-organisation scheme was to single out certain employees for retrenchment or it is actually victimisation, or that the employer did not follow "First come, last go" principle or that it retained junior employees and retrenched senior employees. The employer denied that seniority list was not prepared as per the categories of work in all the units of the establishment. The employer stated that it is a partnership firm runing four departments dealing in different line of business and each department is distinct and complete unit constituting a separate establishment. The employer stated that it had three pumping stations namely B. O. C. pumping station at Margao-Bus-Stand consisting of 2 petrol and 1 diesel pump; Cortalim road pumping station on Margao/Cortalim road consisting of 1 petrol and 1 diesel pump and shell service station near Margao Municipality consisting of 1 petrol and 1 diesel pump and the total staff employed consisted of 20 employees collectively at 3 petrol pump stations, 10 employees at Head Office, 12 employees in workshop and 3 employees in spare parts shop. The employer stated that in December, 1975, the employer conducted

the review of working of all the departments because of continuous reduction in sale of petrol and petroleum products on account of spurt in prices, introduction of scheme of restricted supplies and quota for diesel by oil companies; restricted supplies and quota of business in the commodities for which the employer is the selling agents/dealers and sharp decline in the margin of profits due to the steep rise in the cost of the above commodities, and it was decided to re-organise all lines of business by adopting measures of economy, curtailing of the working hours of the three pumping station, abolishing clerical work at the pumping stations, closing down petrol pump at B. O. C., curtailing repairs work in workshop, abolishing post of driver for driving office vehicles and retiring employees who have crossed age of superannuation. The employer stated that the reorganisation scheme was implemented and the thirteen employees that is, 9 employees working at the three pumping stations, 2 employees working in the Head Office and two employees working in the workshop were rendered surplus, and out of these thirteen employees, 11 were retrenched from service from 25-3-74 and 2 were retrenched from service from 1-4-74, and also the two staff members from the head office who had crossed the age of superannuation were retired from service w. e. f. 1-4-74. The employer stated that the retrenchment was effected on the basis of seniority of employees and the procedure prescribed in Sec. 25 F and 25 G of the I. D. Act, 1947 was followed, and the seniority list of employees was prepared and exhibited on 5/6th February, 1974 in every department. The employer stated that the retrenchment of 13 workmen was the result of re-organisation of business which was done reasonably and bonafidely for reasons of economy and convenience, and the workmen are not entitled to any relief and the reference is liable to be rejected. The Union thereafter filed rejoinder.

4. The records of the case show that no separate issues were framed by this Tribunal but the reference itself was treated as main issue. After the parties had led evidence on their rival contentions, my learned Predecessor passed the Award dated 9-11-1989 holding the action of the management of the employer in retrenching the workmen Shri Motilal M. Shinde, Shri Sham M. Rivankar, Shri Anant Hegde, Shri Jairam Gaonkar as neither legal nor justified and directed the employer to pay an amount of Rs. 30,000/- to each of the above four workmen as compensation in lieu of reinstatement in service and in lieu of back wages. By the said Award, the claim of the remaining nine workmen was rejected as they did not participate in the proceedings and did not show any interest in the proceedings. This Award was challenged by the employer as well as by the workman Shri Anant Hegde in seperate Writ Petitions registered as Writ Petition Nos. 66 of 1990 and 214 of 1990 respectively, in the Hon'ble High Court of Bombay, Panaji (Goa). Both the above Writ Petitions were disposed of by the Hon'ble High Court by common judgment dated 24th June, 1994, setting aside the Award dated 9-11-1989 of this Tribunal. The Hon'ble High Court held that this Tribunal had not given any finding on the issue raised by the employer that the Union had no locus standi to raise the dispute on behalf of the workmen and therefore, the dispute referred by the Government is not an industrial dispute. The Hon'ble High Court therefore remanded the matter to this Tribunal with a direction to give specific finding on the plea of locus standi and/or jurisdiction raised by the employer. The Hon'ble High Court further hold that all other questions raised in the said Petitions are to be kept alive pending the final adjudication of the preliminary issue of jurisdiction involving the plea of locus standi.

5. In view of the remand of the matter by the Hon'ble High Court as stated above, the notices were issued to the parties. Out of the 13 retrenched workmen, only four workmen namely S/Shri Anant Hegde, Jairam Gaonkar, Motilal Shinde and Sham Rivonkar has participated in the proceedings and the Award was passed only in relation to these four workmen. When the Writ Petitions were pending before the Hon'ble High Court, the workman Shri Sham Rivonkar expired and his heirs entered into settlement. Consequently, after the notices were issued, Adv. Shri Gude appeared for workman Shri Motilal Shinde and Shri Jairam Gaonkar; Adv. Shri Savoikar appeared for workman Shri Anant Hegde and Adv. Shri B. G. Kamat appeared on behalf of the employer. They submitted that the parties have already led evidence on the issue of locus standi of the Union to raise the dispute and the same is on record.

6. Arguments were heard on the preliminary issue of jurisdiction involving the plea of locus standi of the Goa Trade & Commercial Workers Union to raise the dispute on behalf of the workmen. Adv. Shri Gude submitted that the workman Shri Jairam Gaonkar in deposition has stated that Union was organised by one Mr. Vaz in the year 1978 who was one of the employees of the employer. He referred to letters dated 27-2-74 Exb. W-7 and 6-4-74 Exb. W-8 and submitted that the said letters sufficiently prove that the union had the authority to raise the dispute on behalf of the workmen. He submitted that the employer participated in the conciliation proceedings and the employer never raised any issue as regards the locus standi of the Union to raise the dispute. Adv. Shri Gude therefore submitted that objection raised by the employer as regards the locus standi of the Union has no substance. He further submitted that the dispute is an individual dispute and it is as regards termination of the services of the workmen by retrenchment and therefore, union need not be a party to the dispute. Adv. Shri Savoikar representing the workman Shri Hegde submitted that the employer in the written statement had raised the point about the authority of the union to raise the dispute on behalf of the workers but, no issue was framed in this regard. He however submitted that though issue was not framed, the parties have led evidence on the said issues. He submitted that the condition for an individual dispute to convert it into an industrial dispute is the necessity of a community of interest and not

whether the concerned workman was or was not the member of the union at the time of his dismissal, or termination. He relied upon the decision of The Supreme Court in the case of Western India Watch Company V/s its workmen, reported in 1970 SC 1205 in support of his contention. Adv. Shri B. G. Kamat, representing the employer submitted on the other hand that the Goa Trade and Commercial Workers Union who has raised the dispute on behalf of the workman is a general union and not the union of the establishment of the employer. He submitted that in the statement of claim as well as in the Rejoinder filed by the Union, it has been stated about the formation of the Union but which union was formed has not been stated. He submitted that there is no averment in the pleadings of the Union that it is the representative union of the workers of the employer/ /company and since the union is a general union, it had to show that substantial number of workers of employer/ /company had become its members. He submitted that no one from the union has deposed as regards the authority of the said union to raise the dispute or that these 13 workmen on whose behalf dispute is raised, formed an union and joined the present union. He referred to the deposition of Shri Motilal Shinde and Jairam Gaonkar and submitted that both these workmen have not said anything about formation or joining recognised union. He also referred to the deposition of workman Mr. Hedge and submitted that he was not associated with the union activities nor he is aware that his case is taken up by the Union. He thereafter referred to the deposition of Shri Riwankar and submitted that he has stated that 13 workmen formed the union, which is contradictory to the deposition of the workman Mr. Hegde. Adv. Shri Kamat submitted that as per the deposition of the employer's witness Mr. Gopal Virginkar, Shri Salvador Vaz had left the services of the employer from 29-9-1973 and therefore, the contention of the workman Mr. Jairam Gaonkar that the union formed by Mr. Vaz in December 1973 is false. Adv. Shri Kamat further submitted that the Union ought to have produced the constitution of the union to show that its General Secretary has the authority to sign the claim statement. He submitted that the Union also did not produce the bye-laws or regulation to show that the General Secretary had the authority to sign the statement of claim. In support of his contention that the union has locus standi to raise the dispute on behalf of the workman and consequently, this Tribunal has no jurisdiction to decide the reference, he relied upon the decision of the Supreme Court in the case of Workmen of M/s Dharampal Premchand (Saugandhi) V/s M/s Dharampal Premchand (Saugandhi) reported in AIR 1966 SC 182 and that of the Calcutta High Court in the case of Deepak Industries Ltd., V/s State of West Bengal reported in 1975 Lab. I. C. 1153.

7. I have given due consideration to the arguments advanced by the learned counsels. Adv. Shri Gude has sought to argue that the employer participated in the conciliation proceedings and did not raise any issue as regards the locus standi of the Union to raise the dispute on behalf of the workmen, and therefore, the objection now raised by the employer has no substance. This submission of Adv. Shri Gude is not correct. The objection which has been raised by the employer is that the dispute which had been referred is not an industrial dispute because, the union which has raised the dispute has no locus standi to do so. Adv. Shri Gude has sought to argue that the employer participated in the conciliation proceedings but did not raise any issue as regards the locus standi of the union to raise the dispute and therefore, the objection now raised by the employer has no substance. This submission of Adv. Shri Gude is not correct. The Bombay High Court in the case of Iqbal Ahmed Kamaruddin V/s P. L. Mazumdar, reported in 1992 (64) FLR 827 in para 8 of its judgement has held as follows:-

"If what is referred to a Tribunal/Labour Court is not an industrial dispute, it is always open to a party to show to the forum that the dispute referred for adjudication though purported to be an industrial dispute, is in reality not an industrial dispute at all. This has always been recognised as an exception to the general rule postulated in Sec. 10 (4). It is, therefore, always permissible for an employer to raise an issue as to whether what has been referred is an industrial dispute at all and there can be no question of the Tribunal being bound by the order of the reference. It is a settled law that the appropriate Government makes a reference upon the prima facie view of the matter as to the existence or apprehension of an Industrial Dispute; it is open to the parties to show that what is referred is not in reality an Industrial Dispute at all ".

The Calcutta High Court in the case of Deepak Industries Ltd. and another V/s State of West Bengal, reported in 1975 Lab. I.C. 1153 has held that mere negotiations by some officials of the union with the employers for conciliation or executing curtain documents on behalf of the workmen prior to reference are no conclusive proofs of the authority of the Union to represent the workman whose dispute it is espousing before the tribunal. The principles laid down by the Bombay High Court and the Calcutta High Court in the above referred cases therefore, makes it clear that the employer is entitled to raise an objection that the dispute referred is not an Industrial Dispute, even after the reference is made by the Government, and the more fact that the employer participated in the conciliation proceedings or did not raise any objection during the conciliation proceedings, does not debar the employer from raising the objection before the Tribunal in a reference that the union has no locus standi to raise the dispute and hence, there is no Industrial Dispute. In the circumstances, there is no substance in the submission made by Adv. Shri Gude.

8. Now, it is to be seen whether the reference is not maintainable because there is no industrial dispute as the Union, namely the Goa Trade and Commercial Workers Union has no locus standi to raise the dispute on behalf of the workman as contended by the employer. Industrial Dispute envisages a collective dispute. Unless there is an industrial dispute, the reference made by

the Government is not maintainable. However, after the introduction of Sec. 2A to the Industrial Disputes Act, 1947, an individual dispute as contemplated under the said section is deemed to be an industrial dispute within the meaning of the Act. Sec. 2A contemplates individual dispute as an industrial dispute when a workman is discharged, dismissed, retrenched or his services are terminated by the Employer. The dispute involved in the present case is as regards termination of the services of the workman by way of retrenchment. Admittedly, the workmen have not raised the dispute individually, that is, by themselves, but it is the Goa Trade and Commercial Workers Union which has raised the dispute on their behalf which means that it is the union who has espoused the dispute on behalf of the Union. If the dispute was raised by the workmen themselves, it would have been deemed to be an industrial dispute and the reference of the dispute by the Government would be valid. But, if the dispute is raised by the Union, and the employer has challenged its authority to raise the dispute, the union must prove its authority by producing some material evidence before the Tribunal. I am supported in my view by the decision of the Calcutta High Court in the case of Deepak Industries Ltd. (Supra) which has been relied upon by Adv. Shri B. G. Kamat, representing the employer. In para 7 of the Judgment, the Calcutta High Court held as follows:-

"... The amended Sec. 2A makes it clear that when an individual dispute is not sponsored by other workman or espoused by the Union of the workman, even then, it would be deemed to be an industrial dispute within the meaning of the Act. Inspite of the said amendment which brings in individual disputes within the scope of the Act, it has not made any difference on the principles as to what would constitute an industrial dispute within the meaning of the Industrial Disputes Act. If it is an industrial dispute within the meaning of the Industrial Disputes Act. If it is an industrial dispute, that is a dispute raised by an individual, it must be raised by him and the reference may be in due course for adjudication under the said Act. On the other hand, if a group of workmen raise a dispute that can also constitute an industrial dispute within the meaning of the Act which may be referred to the tribunal in due course. But, when the dispute is espoused or sponsored by an Union, it seems to have been uniformly held by the judicial decisions which has been referred to by the parties and mentioned hereinbefore that when the authority of the Union is challenged by the employer, it must be proved by the production of material evidence before the tribunal to which such a dispute has been referred that the union has been duly authorised either by a resolution of its members or otherwise that it has the authority to represent the workman whose cause it is espousing. Mere fact that the said Union is registered under The Indian Trade Union Act is not conclusive proof of its real existence or the authority to represent the workman in the reference before the Tribunal....."

"..... It is immaterial whether the said Union is a general Union of the workman of a particular industry or it is a Union of the particular establishment relating to which the dispute has arisen between it and its workman. In each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference, the dispute was taken up or supported by the Union of the workman of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workman."

Therefore, after the introduction of Sec. 2A, the dispute of discharged, dismissed or retrenched workman can be raised by the workman himself or it can be raised by the workman of the establishment or by the Union. But, when such a dispute is raised by the workman himself, the dispute is between the individual workman and the employer and when it is raised by the workman or the union, the dispute is between the workman of the establishment as a class and the employer and in such a case, the workman collectively are the party to the dispute and not the workman individually. Further, when the dispute is not raised by the workman himself but is raised by the Union, if the authority of the union is challenged, such authority is to be proved by producing material evidence before the Tribunal. If the dispute is raised by the union of the workman of the establishment itself, the presumption is that the workman of the establishment have community of interest with the individual employee who is their fellow workman. But the question is different when the dispute is raised by an union which is not of the workman of the establishment, but by a general union of which the workman of a particular establishment becomes its members. In such a case, community of interest is to be proved. Such a union must have a representative character, so as to make a dispute an industrial dispute.

9. In the present case admittedly, the dispute is not raised by the workman themselves but it is espoused the Union, that is, The Goa Trade and Commercial Workers Union. The Statement of Claim is filed by the General Secretary of the Union. This Union is not the Union of the workers of the establishment of the employer but is a General Union. There is no evidence on record to show that the workers of the establishment of the employer had formed an Union. The Union has examined four witnesses namely Shyam Revenkar, Anant Hegde, Jairam Gaonkar and Motilal Shinde. The workman Shri Jairam Gaonkar in his deposition has stated that a Union was organised in the year 1973 by one of the employees Mr. Vaz. However, no details have been given by him. He has not stated the name of the said Union nor said Vaz was examined in the present case. The workman Shri Shyam Revenkar in his deposition has stated that one Union was formed and one Mr. Vaz had taken the lead to form the Union. He has also stated that all the retrenched workman were the members of the said union. However, he also did not

state the name of the Union. In the cross examination, he stated that the said Union consisted of only 13 workmen who are the parties to this reference. However, the workman Shri Motilal Shinde and Shri Anant Hegde have not stated anything regarding formation or organisation of an union by employee Shri Vaz. On the contrary, Shri Anant Hegde in his deposition has stated that he does not know whether any union of the firm was formed. He has further stated that he was not associated with the union activities. Therefore, there is absolutely no evidence on record to show that any union was formed by the employees of the employer. Another very important factor which is to be considered is that none of the witnesses examined by the Union have stated that they had become the members of the said union namely the Goa Trade and Commercial Workers Union nor they have stated that the employees/workers of the establishment of the employer had become the members of the said union. Also the union did not examine any person on its behalf to prove that the employees of the establishment of the employer or for that matter the workmen whose services were retrenched and on whose behalf the dispute is raised are its members. Adv. Shri Gude has relied upon the letters dated 27-2-74 Exb. W-7 and 6-4-84 Exb.W-8 to support his contention that the union had the authority to espouse the dispute. I do not agree with this contention of Adv. Shri Gude. These are the letters which are written by the union to the employer. These letters by themselves do not prove that the employees of the establishment of the employer were the members of the said union. Therefore, there is absolutely no evidence to prove that an union of the employees of the establishment of the employer was formed or that the employees had joined the union, namely, the Goa Trade and Commercial Workers Union, by becoming its members.

10. Besides, in the case of Workmen V/s M/s Dharam Pal Premchand (Supra), relied upon by Adv. Shri B. G. Kamat, the Supreme Court has held that when the workmen of an establishment have no union of their own, some or all of them may join the union of another establishment belonging to the same industry and such an union may take up the cause of a workman working in the establishment and it would be an industrial dispute. The Supreme Court however has further held that this Union should have a representative character vis-a-vis the employees employed in the establishment of the employer. That is, an appreciable number of workmen from the concerned establishment must have joined the said union. In the case of workmen of Indian Express Newspaper(P) Ltd. V/s The management of Indian Express Newspaper Private Ltd., reported in AIR 1970 SC 737, the same principles have been laid down. In that case, 31 working journalist out of 131 working with the Indian Express Newspaper Pvt. Ltd. were the members of the Delhi Union of Journalists which was not the union of the working journalists employed in the said company, and the said union took up the dispute of the two employees working with the said company. The Supreme Court held that since about 25 percent of the working journalist working with the company were the members of the said union, it gave representative character to the said Union. Therefore, it follows that the Union gets the authority to espouse the dispute of a workman of an establishment only when it has the representative character. The Madras High Court in the case of Mellai Cotton Mills V/s Labour Court reported in 1965 I LLJ 95 has held that in the case of espousal of the dispute by a union, it is not sufficient that the union had is its membership a substantial number of workmen from the establishment in which the concerned workman was employed. The High Court held that it must further be shown that a substantial members of such workmen participated in or acted together and arrived at an understanding by a resolution or by other means and collectively supported the dispute. In the case of the workmen of Indian Express Newspaper (P) Ltd. also, there were two resolutions, one passed in the meeting of the 17 working journalist of the company who had become the members of the Delhi Union of Journalist and the other resolution passed by the executive committee of the Delhi Union of Journalists which stated that after considering the representation made to it by the employees of the Indian Express decided to take up the cause of the two workmen and authorised the office bearers of the Union to initiate the necessary proceedings. I have gone through the decision of the Supreme Court in the case of Western India Watch Co. (Supra) relied upon by Adv. Shri Savoikar. In my opinion, this authority of the Supreme Court is not applicable in the facts of the present case. In the said case, it has been held by the Supreme Court that the only condition for an individual dispute turning into an industrial dispute is the necessity of a community of interest and not whether the workmen was or was not a member of the Union at the time of his dismissal, as objection was raised by the employer that at the time when the services were terminated, the workman was not the member of the Union. This point is not in issue in the present case.

11. In the light of what is discussed above, I am of the view that the Union has failed to prove its authority to espouse the dispute on behalf of the workmen. The evidence on record does not show that the workmen were the members of the Union. None of the workmen who were examined stated that they had become the members of the Union, that is, The Goa Trade and Commercial Workers Union. The workmen S/Shri Jairam Gaonkar and Shyam Revonkar in their deposition simply stated that one union was formed in the year 1974. They did not state that, they, alongwith the other retrenched workmen had become the members of the Goa Trade and Commercial Workers Union. Neither the

General Secretary of the union, nor any other office bearer of the Union examined himself before this Tribunal to give evidence that the Union had the authority or locus standi to espouse the dispute of the workmen. In fact, the union had to examine some person on its behalf to prove that the retrenched workmen were the members of the Union. There is also no evidence on record as to how many employees/workmen of the establishment of the employer had become the members of the said Union so as to give representative character to the said Union. In fact, there is no evidence at all to show that any of the employees/workmen of the establishment of the employer was the member of the union, leave aside substantial or appreciable number. Also, there is no document on record in the form of resolution or otherwise to show that the workmen had authorised the union to espouse their cause by raising the dispute nor there is any document in the form of resolution or otherwise to show that the office bearers of the Union were authorised to take up the cause of the workmen. Therefore, it cannot be held that the union, namely the Goa Trade and Commercial Workers Union could represent the workmen so as to transform the dispute between the workmen and the employer into an industrial dispute. Hence, it cannot be held that the Union had the authority or locus standi to espouse the cause of the workmen. It therefore follows that the dispute referred by the Government does not partake the character of an industrial dispute. This being the case, the reference made by the Government is bad in law. I therefore, hold that the employer has succeeded in proving that the Union, namely, The Goa Trade and Commercial Workers Union has no locus standi to raise the dispute on behalf of the workmen and there is no industrial dispute and as such, the reference is not tenable or competent.

In the circumstances, I pass the following order:-

ORDER

It is hereby held that no industrial dispute existed at the time when the Government made the reference. It is hereby further held that the reference made by the Government is bad in law and hence rejected.

No order as to costs.

Inform the Government accordingly.

Sd/-

(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/8959

The following Award dated 3-4-1998 in Reference No. IT/33/90 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 6th May, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/33/90

Shri Gajanan K. Dhargalkar,
Rep. by Goa Auto Accessories Ltd.,
Workers Union,
Honda, Satari Goa. — Workman/Party I

V/s

M/s Goa Auto Accessories Ltd.,
Honda, Satari Goa. — Employer/Party II

Workman/Party I represented by Shri Subhash Naik.
Employer/Party II represented by Adv. Shri P. J. Kamat.

Dated: 3rd April, 1998.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by order No. 28/33/90-LAB dated July 18, 1990 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Goa Auto Accessories Limited, Honda, Satari Goa, in terminating the services of their workman Shri Gajanan K. Dhargalkar, w.e.f. 13-9-1989 is legal and justified?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/33/90 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/Party I (For short "Workman") filed the Statement of Claim which is at Exb. 2. The facts of the case in brief as pleaded by the workman are that the Employer/Party II (For short "Employer") is having its factory at Honda, Satari Goa

and is engaged in the business of manufacturing spare parts for vehicles such as trucks, buses, two-wheelers etc. that the Employer employs about 200 to 250 workers and they work in three shifts, that is from 8 a.m. to 4.30 p.m. from 4.30 p.m. to 1.30 a.m. and from 1.30 a.m. to 8.00 a.m. That the workers of the employer are the members of Goa Auto Accessories Limited Workers Union i.e. G.A.A.L. Workers Union (For short "Union"). That the workman was employed with the Employer as a Turner/Machinist from 15-12-82 and was confirmed in service from 15-12-84 and subsequently, on 1-7-88, his services were up-graded to skilled grade S.K.II with basic salary of Rs. 556/- per month. That on 5-6-89, he and another Co-worker Shri Andrew Fernandes reported for work in the first shift. That a police jeep arrived at the factory and the workman passed a remark saying that the police might have come to enquire with Shri Andrew Fernandes in the case of one Shri Ratnakar Fondekar to which Shri Andrew Fernandes replied that the police might have come to see his mother. That, when the workman went to Shri Andrew Fernandes to inquire as to what exactly he had said, Shri Fernandes hit him on the head with a Selector Shaft piece, as a result of which he started bleeding profusely and was taken to the hospital for treatment. That thereafter, the workman made a complaint to the Employer about the incident and said Andrew Fernandes also made a complaint against him. That the workman wanted to make a police complaint, but did not do so at the instance of the employer who told that if it is done, it's image would be tarnished. That thereafter, the Union took up the matter with the employer and the Union was asked by the Employer to request the workman as well as Shri Andrew Fernandes to withdraw their complaints and the Union was further told that a formal enquiry would be held into the incident but no severe action would be taken. That accordingly, complaints were withdrawn by the workman and Shri Andrew Fernandes by letter dated 15-6-89 and 13-6-89 respectively. That thereafter, a chargesheet dated 6-6-89 was issued to the workman and which was replied by letter dated 15-6-89 and subsequently, a domestic enquiry was held. The workman contended that the Inquiry Officer was bias in favour of the management and the findings which he gave are not based on the facts on record. That, after the enquiry was completed, the workman received a showcause notice from the Employer dated 23-8-89 as to why his services should not be terminated by way of discharge and the said notice was replied by the workman by letter dated 5-9-89. That however, the employer terminated his services by way of discharge with effect from 13-9-89 and the union raised a dispute as regards his termination of service by letter dated 30-11-89 and the concilation proceedings held by the Assistant Labour Commissioner ended in a failure. The workman contended that the action of the employer in terminating his services is illegal and unjustified. He also contended that the punishment imposed on him is severe. The workman therefore, claimed that he is entitled for reinstatement with full back wages.

2. The Employer filed Written Statement which is at Exb.3. The employer submitted that the workman was employed as a Turner/Machinist w.e.f. 15-12-82 and was confirmed by letter dated 15-12-84. The employer stated that on 5-6-89 while the workman and Shri Andrew Fernandes were working in the first shift, a police jeep arrived at the factory at about 10 a.m. in connection with the investigation with regard to the arrest of one Shri Ratnakar Fondekar, a confirmed welder of the Employer/Company. That, it was reported to the Employer that when the jeep arrived, the workman passed a remark that the police might have come to enquire with Shri Andrew Fernandes regarding the case of Shri Ratnakar Fondekar at which Shri Fernandes remarked that the jeep had come to see his mother. That the Employer was informed that the workman went aggressively towards Shri Fernandes and caught hold of his bush-shirt where upon, Shri Fernandes picked up a long steel selector shaft piece and hit on the head of the workman causing heavy bleeding injuries to him which could have been fatal. The Employer stated that the workman was taken to the hospital for treatment and as a result of the commotion, there was a stoppage of production for about half an hour. The employer stated that the workman as well as Shri Andrew Fernandes filed complaints against each other and since the incident was a serious act of indiscipline, a show cause notice-cum-chargesheet dated 6-6-89 was issued to the workman and said Shri Fernandes under clause 22(xiii) and clause 22 (xi) of the certified standing orders of the employer/company. The employer stated that on receipt of the reply dated 14-6-89 from the workman, an enquiry was conducted and the Inquiry Officer submitted his findings on 14-8-89 holding the workman guilty of the charges of mis-conduct and the said findings were accepted by the workman. The employer stated that thereafter a show cause notice dated 23-8-89 was issued to the workman as to why his services should not be terminated by way of discharge as punishment and or considering his reply dated 8-9-89 and on considering the facts that the charges proved against the workman were of serious nature, he was discharged from service w.e.f. 13-9-89. The employer denied that the enquiry held against the workman was not fair and proper or that the Inquiry Officer was biased in favour of the Management or that the findings of the inquiry officer were not based on the evidence on record. The employer denied that the termination of the services of the workman is illegal and unjustified. The employer stated that the workman is not entitled to any reliefs as claimed by him. The workman thereafter filed rejoinder which is at Exb.4.

4. On the pleadings of the parties, following issues were framed:

1. Does Party I prove that the domestic enquiry held against him by the Party II is not legal and proper ?

2. If not, whether the order of termination passed against Party I is legal and justified ?

3. If not, whether Party I is entitled to any relief ?

4. What award or order ?

5. Since the issue No.1 was touching the fairness of the enquiry, the said issue was treated as preliminary issue and the evidence of the parties was recorded on the said issue. By order dated 4-10-91 Exb.19, my learned Predecessor disposed off the issue No.1 holding that in the evidence recorded, the workman did not allege anything against the fairness or the propriety of the enquiry and that Shri Subhash Naik, representing the workman has submitted that he want to challenge the findings recorded by the Inquiry Officer which according to him are not justified. By the said order, the parties were directed to lead evidence on the main issue. Thereafter, when the evidence of the employer was to be recorded, the employer filed an application dated 24-1-95 at Exb.33 seeking to amend the written statement. By the said amendment, the employer wanted to settle the plea of gainful employment of the workman with M/s Sesa Goa Private Limited, Sirsaim and M/s Mauli Industries, Sanquelim. Since the workman did not object to the said amendment, by order dated 4-4-95, the amendment application was allowed and the workman was also permitted to lead evidence in rebuttal. The workman filed additional Rejoinder and on the pleadings of the parties, following additional issues were framed.

1. Does the Party II prove that the Party I worked with M/s Sesa Goa Pvt. Ltd. on probation from 6-8-90 to 5-11-90 and his services were terminated because his performance was found to be far from satisfactory ?

2. Does Party II prove that the Party I is gainfully employed with M/s Mauli Industries ?

6. On framing the above additional issues, the issues were renumbered as follows:-

1. Does the Party I prove that the domestic enquiry held against him by the Party II is not legal and proper?

2. If not, whether the order of termination passed against the Party I is legal and justified ?

3. If not, whether Party I is entitled to any relief ?

4. Does Party II prove that the Party I worked with M/s Sesa Goa Pvt. Ltd. on probation from 6-8-90 to 5-11-90 and his services were terminated because his performance was found to be far from satisfactory ?

5. Does the Party II prove that the Party I is gainfully employed with M/s Mauli Industries ?

6. What award or order ?

7. As mentioned by me earlier, the issue No.1 has been already disposed of by my learned Predecessor by order dated 4-10-91. My findings on the remaining issues are as follows.

Issue No. 2 - In the negative
Issue No. 3 - As per para 12 below
Issue No. 4 - In the affirmative
Issue No. 6 - In the negative
Issue No. 6 - As per order below

REASONS

8. *Issue No. 2:-* Shri Subhash Naik, representing the workman submitted that though initially the workman had challenged the findings of the enquiry officer holding him guilty of the charges levelled against him, now he does not want to challenge the findings of the enquiry officer and that he was challenging only the punishment awarded to him. Shri Subhash Naik also filed an application dated 16-12-97 to that effect. He submitted that though the enquiry officer has held the workman guilty of the charge of passing comments and approaching threateningly towards the co-workman Shri Andrew Fernandes, there is no evidence as to what words were used by the workman in passing the comments and besides, these charges are not misconducts as per the standing orders of the employer. He submitted that even if the charges are held to be proved, the punishment of dismissal awarded to the workman is not justified and that it is disproportionate. He submitted that the workman himself was the victim as a result of the incident as he received severe bleeding injury on his head due to the assault by the co-workman Shri Andrew Fernandes. He submitted that the workman had joined the service in the year 1982 and his past record was clean. He submitted that the incident in question was the solitary incident and involvement of the workman in the said incident was not such so as to make him liable for dismissal from service. In support of his contention that the punishment of dismissal from service awarded to the workman is disproportionate and not justified, Shri Subhash Naik relied upon the decision of the Supreme Court in the case of Ramakant Mishra V/s State of Uttar Pradesh & others reported in 1983 SCC (L&S) 26 and that of the Bombay High Court in the case of Association of Chemicals Works & Others V/s B. D. Borude & Others reported in 1993 I CLR 426. Adv. Shri P. J. Kamat, the learned counsel for the employer on the other hand submitted that the evidence on record shows that the workman has tried to involve Shri Andrew Fernandes in Fondekar's case who was arrested by the police on the charge of gang rape and murder of a young girl from Surla village. He submitted that the workman was the cause of the incident which resulted into grievous injury to him and the stoppage of work for about half an hour. He submitted that the employer was justified in dismissing the workman from service so that the discipline in the establishment could be maintained. Adv. Shri P. J. Kamat submitted that the past conduct of the workman was also not good as can be seen from the warning given to the workman

produced at Exb. 55. He further submitted that the employer has produced the records of the enquiry proceeding concerning the workman at Exb. 28 when he was working with Indo Swiss Jewels which would show that when he was working with the said establishment also, his conduct was not good. He also referred to the progress report produced by the employer at Exb. 49 and submitted that the said progress report also shows that the record of the workman was not good while he was working with M/s Sesa Goa Ltd. Sirsaim. Adv. Shri Kamat submitted that the action of the employer in dismissing the workman from service is legal and justified considering the nature of the incident involved as otherwise, it would affect the discipline in the establishment. In support of his contention, he relied upon the decision of the Supreme Court in the case of Orissa Cement Ltd. V/s Adikanda Sahu reported in 1950-283 SCLJ Vol. 8 at page 358.

9. In the present case, the records of the enquiry proceedings have been produced at Exb. 8. The said records also include the findings of the enquiry officer. The workman has challenged the fairness of the enquiry held against him as also the findings of the enquiry officer. On the evidence led by the parties, my learned Predecessor by order dated 4-10-91 disposed of the issue No. 1 which was treated as preliminary issue as it was touching the fairness of the enquiry, holding that the workman did not allege anything against the fairness of the propriety of the enquiry and the parties were directed to lead evidence on the main issues. In substance therefore, the enquiry was held to be fair and proper. The parties thereafter led evidence on the other issues. When the case was fixed for hearing arguments, Shri Subhash Naik representing the workman submitted that he does not want to challenge the findings of the enquiry officer and that he was challenging only the punishment awarded to the workman, he also filed an application to that effect. His contention is that the punishment of dismissal from service awarded to the workman is disproportionate to the misconduct alleged against him and therefore, this Tribunal should exercise its powers and award lesser punishment.

10. The Supreme Court in the case of the workmen of M/s Firestone Tyre and Rubber Co. of India P. Ltd. V/s The management and others, reported in AIR 1973, SC 1227 has held that after the introduction of Sec. 11-A to the Industrial Disputes Act, 1947, the Tribunal has been after now conferred with the power to alter the punishment imposed by an employer. The Supreme Court has held that under Sec. 11-A, though the tribunal may hold that the misconduct is proved, nevertheless, it may be of the opinion that the order of discharge for the said misconduct is not justified, and under such circumstances, award to the workman only lesser punishment instead. Therefore, as on today, in a given case, the Tribunal has the powers to interfere with the punishment awarded to a workman by the employer and award lesser punishment instead. However, this power has to be exercised judiciously and not arbitrarily. With the above principle in mind, it is now to be seen whether the misconduct which is proved against the workman deserves punishment of dismissal from service or lesser punishment.

11. The records of the enquiry proceedings and the findings of the enquiry officer have been produced at Exb.8. Since the workman has not challenged the findings of the enquiry officer, there is no question of going into the issue whether the misconducts alleged against the workman are proved or not or whether the findings of the enquiry officer are based on evidence on record. To find out whether punishment awarded to the workman is justified or not, it is necessary to look into the charges of misconduct alleged against him. As per the chargesheet dated 6-6-1989, the misconduct which are alleged against the workman are that of commission of an act subversive of discipline or good behaviour in the premises of the establishment and that of using insulting or abusive language, assault or threat of assault, intimidation or coercion within the premises of the company against any employee of the company which fall under clause 22 (xiii) and (xi) respectively of the certified standing orders of the employer company. It is the case of the employer that on 5-6-89, during the first shift at about 11 a.m. the workman passed comments to another co-employee namely Shri Andrew Fernandes and that when he retorted back, the workman approached aggressively towards him and caught hold of his bush-shirt threateningly which led Shri Andrew Fernandes to hit the workman on his head with a selector shaft. The findings of the enquiry officer dated 14-8-89 are on record. The enquiry officer has held that the workman did pass comments at Shri Andrew Fernandes which irritated and provoked him. He has further held that it is also proved that the workman left the place of work and approached Shri Andrew Fernandes in anger and with mal intention, and that further these acts of the workman are subversive of discipline and good behaviour in the premises of the employer's establishment. The enquiry officer however, has held that the allegation that the workman caught hold of the bush-shirt of Shri Andrew Fernandes threateningly is not proved. Therefore, what stands proved against the workman is that he passed comments against co-employee Shri Andrew Fernandes and when he retorted, he approached said Shri Fernandes in anger. From the allegations made in the chargesheet, it can be seen that it is the case of the employer the catching hold of the bush-shirt of Shri Andrew Fernandes was the cause of hitting of the selector shaft piece on the head of the workman by said Shri Fernandes. However, the enquiry officer has held that holding of the bush-shirt of Shri Andrew Fernandes by the workman is not proved. Therefore, it cannot be said that hitting on the head with a selector shaft piece was the result of catching hold of the bush-shirt of Shri Andrew Fernandes by the workman. What is proved against the workman is the passing of the comments against Shri Andrew Fernandes and approaching towards him in anger. The workman has given his statement in the enquiry and he has admitted that he passed the remark that the police had come to meet Shri Andrew Fernandes in Fondekar's case. I do not find any evidence on record

to show that by passing the above said remark, the workman infact was suggesting that Shri Andrew Fernandes was also involved in the case of rape and murder of a girl alongwith Shri Fondekar, as sought to be argued by Adv. Shri P. J. Kamat, the learned counsel for the employer. It is possible that Shri Andrew Fernandes inferred that the workman was trying to suggest that he was also involved in the said case alongwith Shri Fondekar and therefore, in the heat of the moment, he assaulted the workman with the said selector shaft piece. In my view, it is Shri Andrew Fernandes who exceeded his reaction to the remark passed against him by the workman. Nevertheless, the above said behaviour on the part of the workman would be misconduct and an act subversive of discipline and good behaviour as, if he had not passed the remark the incident would not have taken place. However, in my view, considering the act which has been held to be proved against the workman, it cannot be said that the workman was liable for dismissal from service. I am of the view that the punishment of dismissal from service would be disproportionate vis-a-vis the misconduct committed by the workman. Perhaps, the question would have been different if the workman had retaliated after he was hit on the head with the selector shaft piece by Shri Andrew Fernandes and there was a fight between them, or that the other workers had also participated in the incident. Though Adv. Shri P. J. Kamat, the learned counsel for the employer has submitted that on account of the incident, there was stoppage of work for about half an hour, I do not find any evidence to this effect on record. Even then, this would not be a justification for dismissing the workman from service. Assuming that there was stoppage of work for about half an hour, it would be, because of the injury which the workman received on account of the assault on him and not otherwise.

10. The employer has also led evidence to justify its action in dismissing the workman from service being that the past record of the workman was not good. The employer has produced the records of the enquiry proceedings conducted by Indo Swiss Jewels Ltd. at Exb. 28; the letter dated 3-11-90 of Sesa Goa Ltd. at Exb. 50 terminating the services of the workman and the show cause notice dated 17-4-89 at Exb. 29. The records of the enquiry proceedings held by Indo Swiss Jewels Ltd. are in respect of the employment of the workman with the said company prior to his employment with the employer company, and the termination letter dated 3-11-90 is in respect of the termination of the services of the workman when he was working with Sesa Goa Ltd. after his services were terminated by the employer company. In my view, the past conduct of the workman is relevant and is to be considered vis-a-vis his employment with the employer company and not with other companies either prior to his employment with the employer company or subsequent. Therefore, the only evidence as regards the past conduct of the workman is the show notice dated 17-4-89 issued to him by the employer which is produced at Exb. 29. The allegations in the said show cause notice are that on 13-4-89 the workman left the place of work at about 5.30 p.m. and returned at about 6.30 p.m. and that he was again found missing at the place of work after the tea break and further that when the supervisor Mr. Prabhu questioned him about the same, he replied to him in an arrogant manner. The workman in his cross examination has admitted the receipt of the said show cause notice, which was produced by the employer in the course of his cross-examination. In the said show cause notice, the workman was asked to submit his explanation. The employer through its witness Shri Gilman Fernandes has produced the copy of the show cause notice at Exb. 55 wherein there is an endorsement that the workman apologised orally and that he was warned orally. This endorsement cannot be relied upon because it is not made by the workman. Even if it is assumed that the contents of the show cause notice are true and the workman tendered oral apology and that he was warned orally, the allegations in the said show cause notice are not such so as to form one of the basis of justification for dismissing the workman from service. Except for the said show cause notice, no other evidence has been produced by the employer to show that the conduct of the workman while he was in service of the employer was not good. In the cross examination of the workman, it was suggested to him that he was given verbal warnings for misbehaviour. This suggestion was denied by the workman. The employer did not lead any evidence to prove that verbal warnings were given. In fact, the employer examined one Mr. Gilman Fernandes, the Manager (Personnel Admn.) of the employer. In his evidence he never stated that the workman was given verbal warnings for mis-behaviour. If such warnings were given, he would have definitely stated so. Therefore, considering the evidence led by the employer on the past conduct of the workman, I do not find that the evidence is such as would justify the dismissal of the workman in service.

Shri Subhash Naik representing the workman has relied upon the decision of the Supreme Court in the case of Rama Kant Misra (Supra)and that of the Bombay High Court in the case of Association of Chemical Workers and others (Supra). In the case of Rama Kant Misra (Supra) the services of the employee were terminated because he used indiscreet, indecent or threatening language against his superior officer. The Supreme Court held that the use of indiscreet, improper or abusive language shows lack of culture and when it is said that language discloses a threatening posture, it is the subjective conclusion of the person who hears the language because voice modulation of each person in the society differs. The Supreme Court also found that the past conduct of the employee was also not blame-worthy during the long years of his service and therefore, held that the punishment of dismissal from service imposed on the employee was not sustainable. In the case of Association of Chemical Workers and others (Supra) the Bombay High Court held the act on the part of the company in discharging the employees from service for the solitary act of dis-obedience was not legal and justified. Adv. Shri P. J. Kamat, the learned

counsel for the employer on the other hand has relied upon the decision of the Supreme Court in the case of Orissa Cement Ltd. (Supra). I have gone through the said decision and I am of the view that the principles laid down by the Supreme Court in the said case cannot be applied to the present case. In the said case, the employee had abused the Labour Officer not only once but twice without any provocation and the abusive words used were vulgur and indecent. The Supreme Court also found that the apology tendered by the employee was not unconditional. In view of these facts that the Supreme Court held that if the Company took the view that it should not keep the employee in its employment as he was capable of such indecent conduct, it should be justified in dismissing him. Therefore, the facts involved in the present case are different from the one involved in the case of Orissa Cement Ltd. (Supra). In the present case as discussed by me earlier, the incident involved was the solitary incident as far as the workman was concerned which was that of passing the remarks against the co-worker Shri Andrew Fernandes. None of the witnesses examined by the employer stated that the remarks was passed by the workman suggesting that said Shri Andrew was also involved in the case of rape and murder of a girl in which Shri Fondekar was involved. The enquiry officer has also held that there is no evidence that the workman caught hold of the bush-shirt of Shri Andrew Fernandes. According to me, this is relevant because it is the case of the employer, as can be seen from the chargesheet, that the incident of catching hold of the bush-shirt led Shri Fernandes to hit the workman on his head with the shaft selector piece. Therefore, in my view, the workman cannot be held responsible for the irrational and excessive act on the part of the co-worker Shri Andrew Fernandes. The evidence on record does not show that the past conduct of the workman was good except for the solitary incident of issuing show cause notice to him. Therefore, considering all the aspects of the case and in the light of what is discussed above, I am of the view that the punishment of dismissal from service awarded to the workman is disproportionate to the misconduct proved against him. In my view, the punishment awarded to the workman by the employer is too severe and the employer ought to have awarded lesser punishment to the workman than dismissal from service. I do not find any justification for awarding the extreme penalty of dismissal from service. I therefore hold that the order of termination of service passed by the employer against the workman is not legal and justified, hence I answer the issue No. 2 in the negative.

11. *Issue No. 4 & 5:-* Both these issues are taken up together as they are related to the gainful employment of the workman. Since the date of termination of his service. It is the case of the employer that after the services of the workman were terminated, he was first employed with Sesa Goa Limited on probation from 6-8-90 to 5-11-90, and that from thereafter, he is gainfully employed with one M/s Mauli Industries. To prove the employment of the workman with Sesa Goa Ltd, the employer has examined Mr. Krishnan Venkateshwaran, the Manager of Sesa Goa Ltd, Presicion Engg. Unit. He has produced various documents namely the letter dated 24-2-90 of the workman Exb. 39 applying for the post of Turner-Mechanic, the letter dated 11-5-90 Exb. 41 of the company calling the workman for interview, the appraisal on interview dated 23-5-90 Exb. 42, the practical test report of the workman Exb. 44, the letter of appointment dated 23-7-90 Exb.45 and the joining report of the workman dated 6-8-90 Exb.46. All the above document prove that the workman was employed with Sesa Goa Ltd. from 6-8-90 on probation. The workman, in the cross examination of the said witness has not disputed the said documents. The witness Mr. Venkateshwaram has produced the memo dated 25-10-90 Exb.48 issued to the workman; the progress report of the workman for the period from 6-8-90 to 5-11-90 Exb.49 and latter of termination of service dated 3-11-90 Exb.50. These documents show that the services of the workman were terminated because his performance was not found to be satisfactory. The workman in the cross-examination of the said witness has tried to set up the case that the services of the workman were not terminated because his performance was not good but it was done at the instance of the employer company. However, except for putting suggestions in this respect, the workman has not been able to bring in any evidence to support his said contention. One also fails to understand as to why the employer company should be interested in getting the services of the workman terminated by the Sesa Goa Ltd., when he was no more in employment of the employer company. Therefore, considering the above evidence which has been produced by the employer, I hold that the employer has succeeded in proving that the workman was employed with Sesa Goa Ltd. as a probationer for the period from 6-8-90 to 5-11-90 and that his services were terminated because of his unsatisfactory performance.Now, as regards the employment of the workman with M/s Mauli Industries at Sanquelim, the employer has not produced any documentary evidence in support of this contention except the extracts of the register maintained by Sesa Goa Ltd. for the period from 14-7-94 to 7-1-95 Exb.51 colly. These extracts of the register are produced through the witness Shri Venkateswaran. He has stated that subsequent to the termination of services of the workman by Sesa Goa Ltd. the workman has been visiting the Precision Engg. Unit of Sesa Goa Ltd. at Sirsaim on behalf of Mauli Industries for obtaining the work for the said Industry. He has stated that whenever a person visits the office at Sirsaim, he has to enter his name in the register which is maintained at the gate and that the said register shows that the workman had visited the office of Sesa Goa Ltd. at Sirsaim on 16-7-94, 30-7-94, 24-8-94, 27-8-94, 1-10-94, 9-11-94, 21-11-94, 24-11-94, 25-11-94, 26-11-94, 29-11-94, 7-12-94, 8-12-94 and 9-12-94. In his cross examination, it was suggested to him that the extracts of the register does not show that the workman visited the office of Sesa Goa Ltd. on 16-7-94, 24-8-94, 27-9-94 and 9-11-94, which suggestion is denied by him. I have gone through the extracts of the register Exb.51 colly. These extracts do not show that the

workman visited the office of Sesa Goa Ltd. on the dates mentioned by the witness Shri Venkateshwaran. In the evidence of Shri Venkateshwaran, the workman did not deny that he visited the office of Sesa Goa Ltd. for obtaining the orders for Mauli Industries. He only disputed certain dates. The witness however admitted in his cross examination that one Mr. Naik is the proprietor of M/s Mauli Industries, and he is the brother-in-law of the workman. The evidence led by the employer is not enough to hold that the workman is gainfully employed with Mauli Industries. The workman in his evidence has stated that he is not employed with Mauli Industries and has further stated that his brother-in-law runs the factory by employing workers. He has stated that he helps his brother-in-law in running his business and that for that he is not paid anything. He has produced the certificates issued by the Labour Inspector, Bicholim and by the Directorate of Industries at Exb.60 colly to show that his brother-in-law Shri Navnath Naik is the proprietor of the said industry. In his cross examination, it was suggested to him that his brother-in-law pays monthly salary to him being employed with Mauli Industries. This suggestion has been denied by him. Merely because the workman was visiting the office of Sesa Goa Ltd. for obtaining the order for Mauli Industries and that his brother-in-law and his sister are employed, it cannot be inferred that the workman is employed with Mauli Industries. The employer has failed to prove its contention that the workman is being paid monthly salary by his brother-in-law. It is possible that the workman helps his brother-in-law in running his business as contended by him and this need not necessarily mean that he is employed by his brother-in-law on monthly salary. In my view therefore, there is no evidence to show that the workman is gainfully employed with M/s Mauli Industries. I therefore hold that the employer has failed to prove that the workman is gainfully employed with M/s Mauli Industries, Sanquelim. In the circumstances, I answer the issue No.4 in the affirmative and the issue No. 5 in the negative.

12. *Issue No. 3:-* This issue pertains to the relief to be granted to the workman. While deciding the issue No. 2, it has been held by me that the order of termination of services of the workman by the employer is not legal and justified. Considering the misconduct involved and also considering all the aspects of the case discussed by me earlier including the past conduct of the workman, I am of the view that it would be just and proper to withhold one increment of the workman with future effect and reinstate him in service with 50% of the back wages from the date of termination of his service by way of punishment. It has been held by me while deciding the issue No. 4 that the workman was in gainful employment with Sesa Goa Ltd. as a probationer from 6-8-90 to 5-11-90. This period of gainful employment has been taken into consideration by me while awarding back wages as the employment is for a very short period. I therefore set aside the order dated 12-9-90 passed by the employer and hold that the workman is entitled to reinstatement in service with 50% of the back wages from the date of the termination of his service till the date of the Award. I further hold that one increment of the workman shall also be liable to be withheld with future effect.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s Goa Auto Accessories Ltd. Honda, Satari Goa in terminating the services of the workman Shri Gajanan K. Dhargalkar w.e.f. 13-9-89 is not legal and justified. The workman Shri Gajanan K. Dhargalkar is ordered to be reinstated in service with 50% of the back wages from the date of termination of his service till the date of the Award and he shall be entitled to full wages and other benefits from the date of the Award. Further, one increment of the workman Shri Gajanan Dhargalkar shall be withheld with future effect.

There shall be no order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/8960

The following Award dated 5-5-1998 in Reference No. IT/56/97 given by the Industrial Tribunal, Panaji- Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 26th May, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/56/97

Workman,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
Ponda Goa. — Workman/Party I

V/s

M/s Goa Hydraulics,
D-3/15, Tivim Industrial Estate,

Karaswada, Mapusa Goa. — Employer/Party II
Workmen/Party I represented by Adv. Shri P. B. Devari.
Employer/Party II represented by Adv. Shri P. J. Kamat.

Dated: 5-5-98.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order bearing No. IRM/CON/4513 dated 1-9-1997 referred the following dispute for adjudication to this Tribunal.

1. Whether the period of non-employment from 11-11-1996 to 20-1-1997 could be construed as "strike" by the workmen or "refusal of employment" by the management ?

2. Whether the action of the management in seeking the execution of a bond from 20-1-1997 as a pre-condition for entry in the factory premises amongst to refusal of employment or not ?

3. To what relief, if any, the workman are entitled ?

2. On receipt of the reference, a case was registered under No. IT/56/97 and registered A/D notice were issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/Party I (For short "Union") filed statement of claim which is at Exb. 4. The facts of the case in brief as pleaded by the Union are that it represents all the workers of the Employer/Party II (For short "Employer"). That the employer is engaged in the business of manufacturing hydraulic products and most of the workers employed by the employer are skilled and highly skilled such as Turners, Fitters, Welders etc. That the workers of the employer joined the union from 7-10-96 and therefore, the employer started harassing and victimising the workers and as a part of the harassment, on 6-11-96, the employer displayed a notice on the notice board asking the workers to work on 2nd shift from 5.30 p.m. to 1.30 a.m. without providing to them the necessary facilities of rest room or transport facilities as no public transport is available in the midnight from Karaswada Industrial Estate to the place of the resident of the workers. That the workers of the Union informed the employer that in the absence of transport or the rest room facilities and the second shift having being introduced in violation of the certified standing orders of the employer and the provisions of the Industrial Disputes Act, 1947, the workers will resume the duties in the normal shift from 11-11-96. That the workers resumed the normal shift on 11-11-96. The employer did not allow them to do so and also those workers who were working in the general i.e. the normal shift were not allowed to resume their duties and were sent out of the factory gate. The Union thereafter raised on Industrial Disputes before the Assistant Labour Commissioner, Mapusa, vide letter dated 14-11-96. The conciliation proceedings held by the Assistant Labour Commissioner were not attended by the Employer. That the employer in order to victimise the workers implemented various unfair labour practices such as recruiting new workers in the factory and threatening the workers that the factory would be closed if they continued to remain in the Union. That when the employer falsely claimed that the workman were on strike, the Union insisted with the Conciliation Officer to issue letter to the employer directing them to allow the workers to resume duties. That the Deputy Labour Commissioner sent a copy of the minutes of the proceedings to the employer wherein it was stated that all the workers would resume duties from 20-1-97. That however, when the workers reported for work at the factory, they were not allowed to resume their duties and were forced to sign the resignation from the Union and also an undertaking that they were on strike and will not join any union. That the Union requested the Dy. Labour Commissioner to depute an officer at the time when the workers were to report for duties and accordingly, one officer, namely the Labour Inspector Mr. Bandekar was deputed by the Dy. Labour Commissioner on 27-2-97. That however, the employer again did not allow the workers to resume their duties and the matter before the Dy. Labour Commissioner ended in a failure. The Union contended that the action on the part of the employer in forcing the workers to give in writing that they were in strike is unjust, improper and amounts to unfair labour practice. The Union contended that the action of the employer in refusing the workers to resume their normal duties is illegal and unjustified and is in violation of Sec. 25(F) and 25-FFF of the I. D. Act, 1947. The Union therefore, claimed that the workers are entitled to be reinstated in service with full back wages and other consequential benefits.

3. The Employer filed Written Statement which is at Exb. 5. At the outset, the employer stated that the reference is not maintainable as the Union did not make any demand on the management nor raised an industrial dispute before the Asst. Labour Commissioner, Mapusa on the issues referred for adjudication. The employer stated that they were engaged in the business of manufacturing hydraulic products for the last about 16 years and the workers are engaged in different categories such as Turners, Fitters, Welders etc. The employer stated that their establishment being of small nature, the workers were doing all types of work irrespective of their grade and designation. The employer stated that in the past, as and when their factory was running in shifts, the workers used to stay in the rest room provided in the factory premises and they used to go home in the morning. The employer stated that prior to the commencement of the shifts, the workers were informed that the above practice shall be adhered to and that they will have to stay in the rest room after the shift hours as per the practice. The employer stated that as per clause 8 of the certified standing orders, the employer could start more than one shift and require the workmen to work in shifts. The employer stated that on 28-9-96, a notice was displayed for the information of

the workers, that the employer had decided to start second shift from 14-10-96 and the shift schedule would be intimated to them five days in advance. The employer stated that it was decided to start the second shift from 11-11-96 and a notice dated 6-11-96 was displayed on the notice board informing the workers about the same and the workers were grouped in 3 groups namely, Group I, II & III and also the shift schedule for the period from 11-11-96 to 30-11-96 was displayed on the notice board. The employer stated that after starting the second shift, the workers namely S/Shri Laxman Naik, Tulshidas Kashalkar, Suresh Sawant, Ravindra Raul, Govind Parab, Suresh Gawandi, Minguel D'Souza, Gopalan Achar, Meghasham Naik, Shashikant Dhargalkar, Rajendra Navelkar, Vithal Rao, Sameer Naik, Yesulo Ghatwal and Dnyneshwar Aroskar were to report in the first shift commencing from 8-30 a. m. to 5 p. m. and the workers namely S/Shri Suresh Mandrekar, Satyavan Naik, Babli Kaskar, Krishnan Naik, Shivram Salgaonkar, Vinod Salkar and Gurudas Bordekar were to report in the second shift commencing from 5.00 p. m. to 1.30 a. m. The employer stated that on 11-11-96, when the factory was opened for the first shift workers, some workers who were scheduled in the second shift came to the factory and the Supervisor told them that since they were scheduled in the second shift, they should report for work at 5.00 p.m. as per the shift timings, but the said workers refused to leave the factory. That the supervisor also instructed the said workers not to start the machines where upon Mr. Satyavan Naik and Suresh Sawant approached the supervisor aggressively and told him that they will not allow any of the workers to start the work unless the shift working is cancelled and that thereafter the said workers instigated the workers of the first shift not to start work. The employer stated that some workers of the first shift did not start the work inspite of repeated instructions from the supervisor to start the work and about 1½ hour later, the workers of the first shift who had refused to work, and the second shift workers who had come in the first shift went out of the factory premises but remained inside the gate of the factory premises. The employer stated that the said workers who had refused to work had accordingly resorted the illegal and unjustified strike from 11-11-96. The employer stated that on 11-11-96, out of the seven workers scheduled in the second shift, except S/Shri Gurudas Jadhav and Vinod Salkar, other did not report for duty in the second shift and therefore, they also resorted to illegal and unjustified strike from 11-11-96. The employer stated that S/Shri Satyawan Naik, Suresh Mandrekar, Babli Kaskar, Krishna Naik, Shivram Salgaonkar who were to work in the second shift again came to the factory on 13-11-96 and instigated the first shift workers not to work and accordingly, the workers namely S/Shri Rajendra Navelkar, Ravindra Raul, Shashikant Dhargalkar, Tulshidas Kashalkar, Laxman Naik, Govind Parab, Minguel D'Souza and Meghasham Naik who were to work in the first shift did not start work inspite of repeated requests. The employer stated that on 13-11-96, the workers namely S/Shri Suresh Sawant, Shivram Salgaonkar, Krishna Naik, Babli Kaskar, Suresh Mandrekar and Satyawan Naik were issued showcause notice for the acts of misconduct committed by them on 11-11-96, but they refused to accept the said notice when they were offered to them in person and as such, the said notice were sent to them by registered A/D post and they refused to accept the said notice which were sent by registered post. The employer stated that the notice was displayed on the notice board on 14-11-96 informing the workmen that the act on their part in not reporting for work in shifts amounts to illegal and unjustified strike and called upon them to restore normally by attending to their work in their respective shifts. The employer stated that during the period of unjustified and illegal strike, the workers had also indulged in various acts of misconduct such as sabotage, threats to workers, supervisor and the managerial staff who were not on strike. The employer stated that on or about 14-11-96, as letter dated 7-11-96 was received from the union demanding that the employer should provide the transport facilities or rest rooms and should pay the shift allowance @ Rs. 15/- per day per workman and that then only the workers would report in shifts. The employer stated that the Union, namely the Gomantak Mazdoor Sangh has no locus standi as it is not a recognised Union in the establishment of the employer and the said Union was accordingly informed vide letter dated 15-11-96. The employer stated that in the meantime, the Asstt. Labour Commissioner Mapusa took up the matter and called the parties for discussions on 18-11-96 at 3 p. m. and by letter dated 18-11-96, the employer informed the Asst. Labour Commissioner that they could not participate in the discussions as the said Union was not recognised as a sole bargaining agent of the workers of the employer. The employer stated that from 18-11-96 to 23-11-96, the workers in Group II of the notice dated 6-11-96 were to report for work in the second shift and the workers in Group I & III were to report for work in the first shift but they did not do so. The employer stated that on 20-11-96, a notice was put up on the notice board informing all the striking workers that their strike from 11-11-96 is illegal and unjustified and that they should withdraw the said strike and they were further informed that they will not be entitled for wages for the striking period on the principles of "No Work, No Pay". The employer stated that the another notice was put up on the notice board on 27-11-96 again appealing all the striking workers to withdraw their illegal and unjustified strike immediately and report for work in the schedule shifts and also vide letter dated 28-11-96, the employer informed the Asst. Labour Commisssioner that since the workers had resorted to illegal and unjustified strike from 11-11-96, there was no point in attending the discussions and he was asked to advise the striking workers to restore normally immediately. The employer stated that from 25-11-96 to 30-11-96, the workers in Group III were to report for work in the second shift and the others in the first shift, but none of the striking workers reported for work in their respective shifts. The employer stated that in the meantime, the Asst. Labour Commissioner, Mapusa, transferred the conciliation file to the Dy. Labour Commissioner, Panaji and thereafter, the DLC called the parties for discussion on 30-12-96 were upon, the

employer informed the Dy. Labour Commissioner that they have not recognised the said union and therefore, they would not attend the meeting with the said union. The employer stated that they received a letter dated 21-2-97 from the Deputy Labour Commissioner informing that the workers have been advised to join duties w.e.f. 27-2-97 at 10.00 a.m. and the Labour Inspector Mr. Bandekar would ensure the smooth entry of the workmen in the factory. The employer stated that on 27-2-97, Mr. Bandekar visited the factory at 10 a. m. but none of the workers reported for duty and the employer informed Mr. Bandekar that the striking will not be allowed to report for work in their respective shifts unless they give in writing that they would work in a discipline manner and should not resort to any stoppage of work. The employer stated that till 12 noon, none of the workers reported for duty and this was informed to the Dy. Labour Commissioner vide letter dated 27-2-97 immediately. The employer stated that thereafter, a notice dated 21-3-97 was received stating that the employer had refused employment to the employees vide letter dated 1-4-97 informing the Dy. Labour Commissioner that employment was not refused to the workers as alleged and called upon the Deputy Labour Commissioner to furnish to them the demand of the Union to enable them to reply the same. The employer denied that the workers were refused employment and stated that they were on illegal and unjustified strike from 11-11-96. The employer denied that there was violation of the provisions of Sec. 25(F) and 25(FFF) of the I. D. Act, 1947 on their part. The employer denied that the workers were entitled to reinstatement in service with full back wages and other consequential benefits as their services were not terminated, but they were on illegal and unjustified strike. The Union thereafter filed rejoinder which is at Exb. 6.

4. On 6-4-98, Adv. Shri P. B. Devari, representing the Union and Adv. Shri P. J. Kamat, representing the employer submitted that the dispute between the parties was amicably settled. They filed the terms of settlement dated 3-4-98 and also filed an application dated 6-4-98 at Exb. 9 praying that no dispute award be passed as the present dispute does not survive in view of the settlement between the parties as per the terms of settlement dated 3-4-1998.

5. In the present case, the dispute as regards refusal of employment and execution of bond as a pre-condition for entry in the factory premises was raised by the Union and it was the contention of the employer that there was no refusal of employment but the workers were on illegal and unjustified strike. The Government made the reference of the above dispute to this tribunal for adjudication. By application dated 6-4-98 Exb. 9, the union and the employer have submitted that the dispute between them has been settled in terms of settlement dated 3-4-98 filed at Exb. 10 and that consequently, the present dispute does not survive. Since, as per the parties themselves, the dispute between them has been settled, the dispute does not exist and consequently, the reference does not survive.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference does not survive since the dispute does not exist in view of the settlement arrived at between the parties vide terms of settlement dated 3-4-98.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/9139

The following Award dated 11-3-98 in Reference No. IT/70/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour)

Panaji, 26th May, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/70/96.

Workmen,
Rep. by The President,
Goa Trade & Commercial
Workers Union,
Velho Building, 2nd Floor,
Panaji Goa. — Workmen/Party I

V/s

M/s Laxmi Engineering Services,
Mechanical Engineers,
Margao Goa. — Employer/Party II

Workmen/Party I represented by Adv. Shri Raju Mangueshkar.
Employer/Party II - Ex-Parte

Dated:- 11-3-98.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order No. IRM/ /CON/VSC/20/96/11987 dated 8th November, 1996 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Laxmi Engineering Services, Contractor M/s Zuari Agro Chemicals Ltd., Zuarinagar in refusing employment to the following 8 workmen with effect from 17-9-90 is legal and justified?

1. Shri Ravindra A. Raikar
2. Shri Placain Fernandes
3. Shri Ratnakar Naik
4. Shri Salu Fernandes
5. Shri Kamlakar Patel
6. Shri Jose Carvalho
7. Shri Damu Naik
8. Shri Chandrakant Gosavi

If not, to what relief the workmen are entitled ?"

2. On receipt of the reference, a case was registered under No. IT/70/96 and registered A/D notice was issued to the parties. The Workmen/Party I (For short "Union") was duly served with the said notice and Adv. Shri Magueshkar appeared on behalf of the Union. However, since the notice issued to the Employer/Party II (For short "Employer") was returned unserved with postal endorsement 'unclaimed', another notice was sent to the employer under certificate of posting requiring the employer to attend the hearing fixed on 3-3-1997 at 10.30 a.m. However, on the said date, none appeared on behalf of the employer and therefore, one more opportunity was given to the employer to appear on 20-3-1997 at 10.30 a.m. and to file written statement to the statement of claim filed by the Union. However, on this date also, none appeared on behalf of the employer and therefore, the case was proceeded Ex-parte against the employer.

3. The statement of claim filed by the union is at Exb. 5. The facts of the case as pleaded by the Union are that the employer is an engineering workshop taking various contract works at different places all over Goa and is presently doing the contract work of M/s Atta Industries Engineering Works, opposite Rajendra Prasad Building, Margao Goa. That, all the 8 workmen whose names are mentioned in the schedule of reference (For short 'Workmen") were working with the employer continuously at M/s Zuari Agro Chemicals Ltd. Zuarinagar Goa till 27-9-90 and were paid salary between Rs. 900/- to Rs. 1700/- per month. That the workmen were working as Fitters, Welders, Asst. Fitters and Riggers from January, 1988 and though, no letter of appointment was issued to them, all the workmen were covered under ESI Scheme by the employer. That a settlement was signed by the Union under section 12(3) of the I. D.. Act, 1947 before the Assistant Labour Commissioner, Vasco da Gama, Goa on 4-9-90 in the matter of refusal of employment and as per the terms of settlement, the workmen were permitted to resume duties w.e.f. 10-9-90. That the employer failed to comply with the terms of the settlement and therefore the union by letter dated 29-10-90 requested the employer to pay the second instalment as well as salary for the month of October, 1990. That, inspite of sending reminders, the employer did not pay to the workmen the amount claimed, nor sent any reply to reminders and therefore, the union by letter dated 26-2-92 raised an industrial dispute before the Labour Commissioner and also sent the copy of the said letter to the employer. That the employer did not reply to the said letter and hence the union sent one more letter dated 5-7-93 to the Dy. Labour Commissioner, Margao, raising the dispute. That the office of the Labour Commissioner sent letters/notices to the employer asking for compliance of terms of settlement. That the employer did not attend the conciliation proceedings held by the Asst. Labour Commissioner, Vasco. The Union contended that the refusal of employment to the workmen by the employer is without notice and payment of legal dues and also in non-compliance of section 25(F) of the I. D. Act. 1947. The Union therefore contended that the refusal of employment to the workmen is illegal and unjustified and therefore, they are entitled to be reinstated in service with full back wages and other consequential benefits.

4. The present case has proceeded ex-parte against the employer as inspite of the opportunity given, none appeared on their behalf. The Union has examined one witness in support of its case, namely the workman Mr. Kamlakar Patel. In his deposition, he has stated that he was working with the employer as a Rigger in the year 1988 alongwith the other 7 workmen. He has stated that the employer was engaged in the services were terminated, the employer was carrying on the contract with M/s Zuari Agro Chemicals Ltd., Vasco. He has stated that the employer refused employment to them on 17-9-90 and that time, he and workmen Mr, Jose Carvalho, Mr. Damu Naik and Mr. Chandrakant Gosavi were drawing salary of Rs. 900/- p.m.; Mr. Salu Fernandes Rs. 975/- p.m.; Mr. Placian Fernandes Rs. 1050/- p.m.; Mr. Ratnakar Naik Rs. 1150/-p.m. and Mr. Ravindra Raikar Rs. 1750/- p.m. He has produced the identity cards issued by the ESI Corporation through the employer Exb. W-1 colly to show that the workmen including himself were contributing towards the ESI contribution. The said identity cards mentions the name as well as the code number of the employer as well as the name of the respective workman. He has produced the settlement dated 4-9-90 signed by Shri T. Lotlekar, the Proprietor of the employer M/s Laxmi Engineering Contractors, with the Union before the Asst. Labour Commissioner, Vasco. This settlement Exb.W-2 shows that besides other things, the employer had agreed that the lay off would be lifted from 9-9-90 and the workmen would be permitted to resume duties w.e.f. 10-9-90. The witness Shri Patel has stated that the Labour Commissioner had issued a notice to the employer dated 23-3-92 Exb. W-3 asking the employer to implement the settlement. He has stated that since the employer

refused employment to the workmen, the Union raised dispute by letter dated 26-2-92 and produced the copy of the said letter at Exb.W-4. He has also produced the failure report at Exb.W-6 as the employer did not attend the conciliation proceedings held by the Asst. Labour Commissioner. The witness Mr. Patel has further stated that the employer refused employment to the workmen from 17-9-90 without giving them any notice and without paying any legal dues to them. He has also stated that he was employed from 11-1-88 and the remaining workmen were employed between the period January to April, 1988.

5. The evidence led by the Union which is discussed above proves that the workmen were in the employment of the employer M/s Laxmi Engineering Works. There was a settlement signed by the employer with the Union agreeing to lift the lay-off and allow the workmen to resume their duties from 10-9-90. The contention of the Union is that the employer refused employment to the workmen from 17-9-90. There is no challenge to the case pleaded by the Union as the employer inspite of giving opportunity, allowed the case to proceed ex-parte and consequently, the evidence of the Union has gone unchallenged. The Union has produced the failure report of the conciliation Officer at Exb.W-6. This report also shows that the employer was given opportunity to attend the conciliation proceedings. But, the employer neither attended the said proceedings nor filed any written statement. The contention of the Union is that the employer violated the provisions of Sec. 25F of the I.D. Act, 1947. Section 25F of the Act lays down the procedure for retrenching the services of a workman. Retrenchment is defined under Sec. 2(oo) of the I.D. Act, 1947. As per the said definition, Retrenchment means termination of services of a workman otherwise than by way of disciplinary action. The services of the workmen were not terminated by way of disciplinary action but they were simply refused employment. Their case also does not fall within the exceptions laid down under the said section 2(oo). Therefore, refusal of employment to the workmen amounts to retrenchment. As per Sec. 25F of the I.D. Act, 1947, the employer has to follow the procedure for retrenching the services of a workman. As per the said provision, the services of a workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of such notice and he has been paid compensation at the rate of 15 days average wage per each completed year of continuous service or any part thereof in excess of six months. The above conditions are the conditions precedent to retrenchment. Sec.25B(2) of the I.D. Act, 1957 defines "Continuous Service". It states that a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 190 days in case of a workman employed below ground in a mine and 240 days in any other case. In the present case, the workman Shri Kamalakar Patel, who examined himself in support of the case stated in his deposition that he was employed from 11-1-1988 and the other workman were employed between the period from January to April 1988, and they were refused employment from 17-9-90. As I have said earlier, the employer did not participate in the proceedings and allowed the case to proceed ex-parte. Consequently, the evidence of the union has gone unchallenged. There is no evidence which is contrary to the evidence led by the Union and I have no reasons to disbelieve the said evidence. Therefore, it is established that the workmen worked with the employer for more than 240 days prior to 17-9-90 and hence the provisions of Sec.25F of the I.D. Act, 1947 became applicable to the workmen. The Supreme Court in the case of M/s Avon Services Production Agency Pvt. Ltd. V/s Industrial Tribunal, Haryana and others reported in AIR 1979 SC 170 has held that giving of notice and payment of compensation is a condition precedent in the case of retrenchment and failure to comply with the prescribing conditions precedent for valid retrenchment in Sec. 25F renders the order of retrenchment invalid and inoperative. In the present case, the witness Shri Patel has stated that the workmen were neither given notice nor were paid legal dues. There is no evidence that the workmen were given one month's notice or were paid wages in lieu of notice or were paid retrenchment compensation. Therefore, there is no compliance of Sec.25F of the I. D. Act, 1947 from the employer. In the circumstances, I hold that the refusal of employment to the workmen is illegal and unjustified.

6. Once it is held that the refusal of employment is illegal and unjustified, the next question for consideration is what relief should be granted to the workmen. The ordinary rule is that the workman is entitled to reinstatement with full back wages, unless there are circumstances which do not warranty reinstatement or full back wages. In the present case, I do not find any reasons to deviate from this rule. The witness Shri Patel has stated in his deposition that he and the other workmen are unemployed from the date of refusal of employment to them. There is no evidence on record to the contrary. The Supreme Court in the case of State Bank of India V/s Sundera Money reported in AIR 1976 has held that reinstatement is the necessary relief in case of violation of the provisions of Sec.25F of the I. D. Act, 1947. In the present case, the services of the workmen were terminated in violation of Sec. 25F of the I.D. Act, 1947. There is no evidence that the workmen were gainfully employed. I therefore hold that the workmen are entitled to reinstatement in service with full back wages and other consequential benefits.

In the circumstances, I pass the following order:-

ORDER

It is hereby held that the action of the Management of M/s Laxmi Engineering Services, Contractor to M/s Zuari Agro Chemicals Ltd., Zuarinagar, in refusing employment to the workmen (1) Shri Ravindra Raikar, (2) Shri Placian Fernandes, (3) Shri Ratnakar Naik, (4) Shri Salu Fernandes, (5) Shri Kamalakar Patel, (6) Shri Jose

Carvalho, (7) Shri Damu Naik and (8) Shri Chandrakant Gosavi with effect from 17-9-90 is illegal and unjustified. The said workmen are ordered to be reinstated in service with full back wages and other consequential benefits.

No order as to cost.

Inform the Government accordingly.

Sd/.
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/9137

The following Award dated 15-1-1998 in Reference No. IT/22/90/46 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 11th June, 1998.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. IT/22/90

Workmen,
Rep. by the General Secretary,
Goa Trade & Commercial Workers
Union, Panaji Goa. —Workmen/Party I

V/s

M/s Sardessai Engineering Works,
Naguesh Bhawan,
Cortalim Goa. —Employer/Party II

Workmen/Party I represented by Adv. Shri Raju Mangueshkar.

Employer/Party II represented by Adv. Shri P. J. Kamat.

Dated: 15-1-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order No. 28/21/90--LAB dated June 13, 1990 referred the following dispute for adjudication by this Tribunal.

"Whether the following demands raised by the Goa Trade and Commercial Workers Union before the management of M/s Sardessai Engineering Works, Cortalim, are justified?

DEMANDS

Demand No.I:- *FLAT RISE:* It is a demand that the management ought to multiply the existing daily rate of wages paid to the workmen by 30 days and that each workman be paid a flat-rise of Rs. 400/- per month and that further, the flat-rise of Rs. 400/- over and above the existing daily rate of wages multiplied by 30 days shall comprise the monthly basic salary.

Demand No. II:- *TRAVELLING AND SUNDRY ALLOWANCE:* It is demanded that a workman be paid Rs. 5/- per day towards travelling and sundry allowance.

Demand No. III:- *UNIFORM AND WASHING ALLOWANCE:* It is demanded that each workman be given two pairs of uniforms and a washing allowance of Rs. 25/- per month.

Demand No. IV:- *LEAVE FACILITIES:* It is demanded that each workman be entitled for leave as follows:-

Privilege Leave	: 30 days per annum
Casual Leave	: 10 days per annum
Sick Leave	: 10 days per annum
Holidays	: 10 days per annum

Demand No. V:- *FREE TEAS:* It is demanded that the management shall give two cups of tea free of charge to each workman per shift.

Demand No. VI:- It is demanded that each workman be entitled for an annual increment of Rs. 40/- to be due in January each year.

If not, to what relief the workmen are entitled?"

2. On receipt of the reference, a case was registered under No. IT/22/90 and registered A/D notice was issued to the parties. The Workmen/party I (For short "Union") filed Statement of Claim which is at Exb. 2. The facts of

the case in brief as pleaded by the Union are that the Employer/Party II (For short "Employer") is a partnership firm having workshop of repairing of barges & barge-building at Cortalim, Salcete Goa. That on 1-7-89, the workers of the employer became the members of the Union, namely the Goa, Trade and Commercial Workers Union and this fact was informed to the employer. That after joining the said union, a Charter of Demands was raised against the employer by the Union by letter dated 1-7-89. That, Government referred all the demands raised by the Union for adjudication to this Tribunal,working. The Union contended that the employer paid to the workmen daily wages at the rate of Rs. 14/- to Rs. 24/- for different categories without any annual increments. The Union contended that the cost of living in Goa is highest in India as also the housing cost. The Union contended that the salary remained stagnant whereas the cost of living increased day by day and therefore, the workmen ought to have been paid their salary as demanded in the Charter of demands. The Union further contended that the employer has been carrying on the repairs and building work of the barges in full swing. The Union in the circumstances contended that the demands raised by them are legal and justified.

3. The employer filed Written Statement which is at Exb. 3. The Employer stated that the reference is not maintainable as against the employer because, the workmen on whose behalf the demands were raised by the Union were not employed by the Employer and that they were employed by the Contractor Mr. Agostinho Andrade. The employer admitted that the Charter of Demands dated 1-7-89 was received by the employer from the Union. The employer stated that since the workmen were not its workers, the employer did not give any response to the letter of the Union wherein, demands were raised. The Employer denied that the workmen are entitled to the demands raised by them through the Union. The employer further stated that the workmen on whose behalf the union has raised the demands are not in service of the employer either directly or through the Contractor and therefore, the question of granting demands did not arise. The employer stated that its financial position does not permit to agree to any rise in the wages of the workmen and any financial burden on the employer would compel the closing down of its unit. The employer therefore, prayed that the demands raised by the Union on behalf of the workmen be rejected. The Union thereafter filed rejoinder at Exb. 4.

4. On the pleadings of the parties, issues were framed at Exb. 5 and thereafter, the case was fixed for the evidence of the Union. On 5-1-98, when the case was fixed for the hearing, Adv. Shri Raju Mangueshkar, representing the Union and Adv. Shri P. J. Kamat, representing the Employer submitted that the dispute between the parties was amicably settled. They produced the copy of the terms of settlement entered between the parties dated 5-1-98. They also filed an application dated 5-1-98 Exb. 11 praying that no dispute Award be passed as the dispute of Charter of Demands does not survive in view of the settlement dated 5-1-98.

5. In the present case, the dispute as regards the demands raised by the Union was referred by the Government to this Tribunal for adjudicating the said dispute. By application dated 5-1-88 Exb. 11, the Union and the Employer have submitted that in view of the settlement dated 5-1-98 arrived at between the Union and the Employer, the dispute as regards the demands raised by the Union does not survive. Since, as per the parties themselves, the dispute between them has been settled by settlement dated 5-1-98, the dispute does not exist and consequently, the reference does not survive.

In the circumstances, I pass the following order:-

ORDER

It is hereby held that the reference does not survive since the dispute does not exist in view of the settlement dated 5-1-98 between the Union, namely the Goa, Trade & Commercial Workers Union and the Employer, namely, M/s. Sardessai Engineering Works.

No order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/11539

The following Award dated 9-10-1998 in reference No. IT/57/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 30th October, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/57/98

Shri Ajit Borkar,
Colmorod,
Navelim-Goa. — Workman/Party I

v/s

M/s Holzmann Videocon
Engineers Ltd.,
Mobor, Cavelosim-Goa. — Employer/Party II

Party I/Workman - Absent.
Party II/Employer - Represented by Shri Jaiwant.

Panaji, dated: 9-10-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub - section (1) of section 10 of the Industrial Disputes Act, 1947 (Cental Act 14 of 1947) the Government of Goa by order dated 2nd July, 1998 bearing No. IRM/CON/SG/(8)/98/9487 referred the following dispute for adjudication by this Tribunal.

(1) Whether the action of the management of M/s Holzmann Videocon Engineers Limited, Mobor, Cavelossim-Goa, in terminating the services of Shri Ajit Borkar, driver, with effect from 1-1-1998, is legal and justified ?

(2) If not, to what relief the workman is entitled ?

2. On receipt of the reference a case was registered under No. IT/57/98 and registered A/D notice was issued to the parties. The registered A/D notice which was issued to the Workman/Party I (for Short, "Workman") was returned unserved with postal remarks, "Party left". Since the registered A/D notice was returned unserved a fresh notice under certificate of posting was issued to the workman. Inspite of the said notice the workman remained absent. The Registered A/D notice which was issued to the Employer/Party II (for short "Employer") was duly served on the employer. On 24-9-98 when the case was fixed for hearing one Shri Jaiwant, employee of the employer remained present on behalf of the employer and filed an application signed by Shri S. C. Satwilkar, the Project Administrator of the employer. Along with the said application the employer also filed an application duly signed by the workman before the Notary, Shri Lazarus Viegas, Margao, Goa. In the said application the employer stated that the dispute between the parties was amicably settled and that this fact was admitted by the workman in his application executed before the Notary at Margao. The employer therefore pray that the reference be disposed of. I have gone through the application executed by the workman before the Notary which has been produced by the employer in support of his contention that the dispute between the parties has been amicably settled. In the application the workman has admitted that all his disputes with the employer have been settled and he has no further grievances of whatsoever nature against the employer. He has also prayed in the said application that the present proceedings be disposed of as the matter has been already settled between him and the employer.

3. Since the employer has submitted that the dispute between the workman and the employer has been amicably settled and this fact has been supported by the application executed by the workman before the Notary, Margao, the dispute does not exist and consequently the reference does not survive. In the circumstances I pass the following order.

ORDER

It is hereby held that the reference does not survive as the dispute does not exist in view of the settlement of the matter between the workman Shri Ajit Borkar and the employer M/s. Holzmann Videocon Engineers Ltd., Mobor, Cavelossim-Goa.

No order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal

Order

No. CL/Pub-Awards/98/8954

The following Award dated 22-4-1998 in reference IT/45/97 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 26th May, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/45/97

Shri Gundu V. Gawade,
Rep. by the President,
ACGL Employees Consumers'
Cooperative Society Workers'
Union, Honda, Satari-Goa. —Workman/Party I

v/s

M/s. Automobile Corporation
of Goa Ltd.,
Honda, Satari Goa. — Employer/Party II

Workman/Party I represented by Adv. A. V. Nigalye.
Employer/Party II represented by Adv. Shri M. S. Bandodkar.

Dated: 22-4-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order dated 11-8-1997 bearing No. IRM/CON/(64)/96/4266 referred the following dispute for adjudication to this Tribunal.

"Whether the action of M/s. Automobile Corporation of Goa Limited, Honda, Satari Goa, in terminating the services of Shri Gundu V. Gawade, by way of dismissal with effect from 15-6-1996 close to working hours, is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/45/97 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (For short "Workman") was represented by Adv. Shri A. V. Nigalye and the Employer/Party II (For short "Employer") was represented by Adv. Shri M. S. Bandodkar. The workman was given several opportunities to file his Statement of Claim in support of its case as can be seen from the records of the case. On 27-1-98, when the case was fixed for filing of the Statement of Claim by the workman, Adv. Shri Nigalye, the learned counsel for the workman submitted that he has received a letter from the workman stating that he does not want to proceed further with the case and that he does not want to file any Statement of Claim on his behalf. Adv. Nigalye produced the said letter dated 8-12-97 received by him from the workman and submitted that necessary Award be passed. Adv. Shri M. S. Bandodkar, the learned counsel for the Employer submitted that he does not want to file any Statement of Claim on behalf of the employer. He submitted that the Award be passed holding the action of the employer in terminating the services of the workman by way of dismissal w.e.f. 15-6-96 as legal and justified.

3. The reference of the dispute was made by the Government at the request of the workman as he challenged the action of the employer in terminating his services. It is a settled law that a party who challenges the legality of the order or the action taken by the employer, the burden lies on that party to prove the legality of the said order or the action. The Allahabad High Court in the case of V. K. Raj Industries V/s Labour Court and others reported in 1981 (29) FLR 194 has held that the proceeding before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court but the principles underlying the said Act are applicable. The High Court has held that it is well settled law that if a party challenges the validity of an order, the burden lies upon him to prove the legality of the order and if no evidence is produced, the party invoking the jurisdiction must fail. The High Court has further held that if the workman fails to appear or to file Written Statement or to produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he would not be entitled to any reliefs. The Bombay High Court, Panaji bench in the case of V.N.S. Engineering Services V/s Industrial Tribunal, Goa, Daman & Diu and another reported in FJR Vol. 71 at page 393 has held that the obligation to lead evidence to establish an allegation is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court further held that the provisions of Rule 10-B of the Industrial Disputes (Central) Rules, 1957 clearly indicates that the party who raises an industrial dispute is bound to prove the contentions raised by him and the Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party of the dispute.

4. In the present case, it is the workman who raised the dispute that the termination of his services by the employer by way of dismissal w.e.f. 15-6-96 is illegal and unjustified and at his instance, the reference was made by the Government. Therefore, applying the law laid down by the Bombay High Court and the Allahabad High Court in the above referred cases, the burden was on the workman to prove that the action of the employer was illegal and unjustified. The workman was given several opportunities to file his Statement of Claim in support of his case. However, the workman did not do so. The letter dated 8-12-97 written by the workman to the Secretary of Automobile Corporation of Goa Limited Employees Consumers Co-operative Society Workers' Union and a copy of which is marked to Adv. Shri Nigalye shows that the workman is not interested in proceeding further with the matter. He has submitted that no Statement of Claim should be filed on his behalf. Therefore, it is clear that the workman is not interested in pursuing further with the matter. This being the case, there is no material before me to hold that the action of the employer in terminating the services of the workman by way of dismissal is not legal and justified. In the absence of any evidence, the reference cannot be answered in favour of the workman. In the circumstances, I hold that the workman has failed to prove that the action of the employer in terminating his services by way of dismissal from 15-6-96 close to working hours is illegal and unjustified.

Hence, I pass the following order:-

ORDER

It is hereby held that the action of the employer M/s Automobile Corporation of Goa Limited, Honda, Satari Goa, in terminating the services of the workman Shri Gundu V. Gawade, by way of dismissal w.e.f. 15-6-96 close to working hours is legal and justified and the workman is not entitled to any relief.

No order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

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